ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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December 4, 2012

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Attorney General Holder:

We are following up on our prior requests that the Department of Justice provide copies of any memoranda setting forth the legal and factual justifications for the targeted killing of Anwar al-Awlaki and the Administration's broader use of unmanned aerial aircraft ("drones") to conduct airstrikes against terrorist targets. We requested information regarding the Administration's use of "personality" strikes where a specific individual has been identified and targeted as well as the use of "signature" strikes where, according to press reports, a strike is authorized based on patterns of behavior in an area but where the identity of those who could be killed is not known. *See* Letter from John Conyers, Jr. et al. to Hon. Eric H. Holder, Jr., U.S. Att'y Gen. (May 21, 2012). In addition to requesting this material or a briefing for ourselves, we also asked the Department to provide a public analysis – suggesting, for example, a white paper – to increase transparency and accountability and allow for informed public debate over the use of lethal targeting as a counterterrorism measure.

On June 22, 2012, the Department provided us with a copy of a Department of Justice White Paper titled "Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is A Senior Operational Leader of Al-Qa'ida or An Associated Force." That document, which is marked as "Draft November 8, 2011," sets forth the legal framework for considering the circumstances in which a particular, identifiable United States Citizen may be targeted. In transmitting that document to us, the Department acknowledged that this white paper is not classified, but took the position that it is not intended for public dissemination.

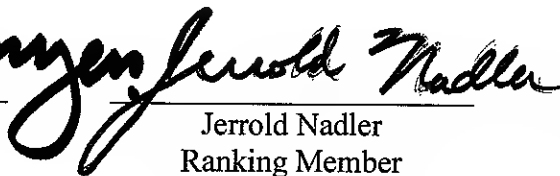
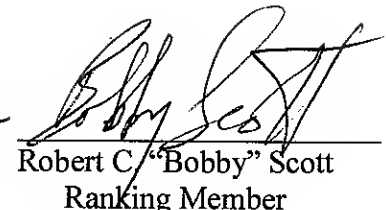
We appreciate the Department's transmission of the white paper, which fleshes out the legal points outlined in public speeches by you and by John Brennan, Assistant to the President for Homeland Security and Counterterrorism, and represents a positive step in responding to our prior requests for information. Unfortunately, while providing some additional information, the paper does not fully satisfy our prior requests or fulfill our ongoing need for information that

allows us to conduct meaningful congressional oversight. We therefore ask that you provide the following information.

First, given the fact that the paper that we received is marked as a draft, we are interested in knowing whether the paper has been revised or finalized. If so, please provide copies of any revised or finalized versions.

Second, while the white paper explains the legal framework for a particular circumstance – namely, where the Administration has identified a particular U.S. citizen who is a senior operational leader of al-Qa'ida – it does not explain the Administration's broader use of drone strikes including, for example, its alleged use of "signature" strikes. As we noted in our May 21, 2012 letter, it is not clear why and how the legal and ethical justifications and process for identifying and targeting specific individuals would apply to signature strikes. We therefore reiterate our request for copies of all memoranda or opinions that provide a legal or factual justification for the Administration's broader drone program, including its use of "signature strikes," or to otherwise brief us on this.

Third, while outlining the legal justifications for a particular type of strike, the paper also does not explain the process by which the Administration determines that legal and strategic prerequisites have been met before a strike is authorized. Mr. Brennan outlined that process in his April 30, 2012 public address at the Woodrow Wilson International Center for Scholars, noting that the Administration would "look to institutionalize our approach more formally so that the high standards we set for ourselves endure over time, including as an example for other nations that pursue these [the use of advanced technology for lethal targeting] capabilities." Recent press reports also indicate that the Administration has been developing explicit rules to govern lethal targeting of terrorists. *See, e.g.,* Scott Shane, *Election Spurred a Move to Codify U.S. Drone Policy*, NY Times, Nov. 24, 2012. Given the increased use of unmanned drone strikes, and the Administration's acknowledgement that future administrations and other countries are likely to look to the standards and processes that this Administration has employed, a clear and complete understanding of the processes as well as the legal principles for the entire program is critical. We therefore request that you brief us on the status and substance of any proposed rules and your plans for making such rules public, a step that we believe essential to ensuring that appropriate standards are established to guide this and other nations going forward.

Finally, we also ask that you publicly release the Department of Justice White Paper titled "Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is A Senior Operational Leader of Al-Qa'ida or An Associated Force." The paper does not contain classified information and public release of this analysis would be a valuable continuation of the Administration's efforts – illustrated by your and Mr. Brennan's public remarks – toward honoring the President's commitment to greater accountability and transparency.

We look forward to a response at your earliest convenience.

Sincerely,

John Conyers, Jr.
Ranking Member

Jerrold Nadler
Ranking Member
Subcommittee on the Constitution

Robert C. "Bobby" Scott
Ranking Member
Subcommittee on Crime, Terrorism and Homeland Security

cc: The Honorable Lamar Smith, Chairman, House Committee on the Judiciary